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FILED
2008 JUL -3 PM 4:20
CLERK US DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY *[Signature]* DEPUTY

8 IN THE UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA

10 KAREL SPIKES,

11 Plaintiff,

12 vs.

13 SAN DIEGO FRICTION PRODUCTS, INC.;
14 STONECREEK HOMES, INC. and DOES 1
15 THROUGH 10, Inclusive,

Defendants.

Case No.:

16 '08 CV 1201 DMS WMC

CIVIL COMPLAINT

DEMAND FOR JURY TRIAL
[F.R.C.P. §38(b);
Local Rule 38.1]

17 Plaintiff, KAREL SPIKES (hereinafter referred to as
18 "Plaintiff"), file this cause of action against Defendants SAN
19 DIEGO FRICTION PRODUCTS, INC. (hereinafter "SAN DIEGO FRICTION
20 PRODUCTS"), STONECREEK HOMES, INC. and DOES 1 THROUGH 10,
21 Inclusive, and would show unto the Court the following:

22 I.

23 JURISDICTION AND VENUE

24 1. This Court has original jurisdiction of this civil
25 action pursuant to 28 USC §1331, 28 USC §§1343(a)(3) and
26 1343(a)(4) for claims arising under the Americans with
27 Disabilities Act of 1990, 42 USC §12101 et seq. and the Court's
28 supplemental jurisdiction, 28 USC §1337.

1 2. Venue in this Court is proper pursuant to 28 USC
2 §§1331(b) and (c).

3 3. Pursuant to 28 USC §1337(a), Plaintiff shall assert
4 all causes of action based on state law, as plead in this
5 complaint, under the supplemental jurisdiction of the federal
6 court. All the causes of action based on federal law and those
7 based on state law, as herein stated, arose from a common nuclei
8 of operative fact. That is, Plaintiff was denied equal access
9 to Defendants' facilities, goods, and/or services in violation
10 of both federal and state laws and/or was injured due to
11 violations of federal and state access laws. The state actions
12 of Plaintiff are so related to the federal actions that they
13 form part of the same case or controversy. The actions would
14 ordinarily be expected to be tried in one judicial proceeding.

15 **II.**

16 **THE PARTIES**

17 4. Defendant SAN DIEGO FRICTION PRODUCTS is, and at all
18 times mentioned herein was, a business or corporation or
19 franchise organized and existing and/or doing business under the
20 laws of the State of California. SAN DIEGO FRICTION PRODUCTS is
21 located at 455 16th Street, San Diego, CA (hereinafter "the
22 subject property".) Plaintiff is informed and believes and
23 thereon alleges that Defendant SAN DIEGO FRICTION PRODUCTS is,
24 and at all times mentioned herein was, the owner, lessor or
25 lessee of the subject property and/or the owner and/or operator
26 of the public accommodation located at the subject property.

27 5. Defendant STONECREEK HOMES, INC. is, and at all times
28 mentioned herein was, a business or corporation or franchise

1 organized and existing in and/or doing business under the laws of
2 the State of California. Plaintiff is informed and believes and
3 thereon alleges that Defendant STONECREEK HOMES, INC. is, and at
4 all times mentioned herein was, the owner, lessor or lessee of
5 the subject property.

6 6. Plaintiff is informed and believes, and thereon
7 alleges, that Defendants and each of them herein were, at all
8 times relevant to the action, the owners, franchisees, lessees,
9 general partners, limited partners, agents, employees,
10 employers, representing partners, subsidiaries, parent
11 companies, joint venturers and/or divisions of the remaining
12 Defendants and were acting within the course and scope of that
13 relationship. Plaintiff is further informed and believes, and
14 thereon alleges, that each of the Defendants herein gave
15 consent to, ratified, and/or authorized the acts alleged herein
16 of each of the remaining Defendants.

17 7. Plaintiff is an otherwise qualified disabled
18 individual as provided in the Americans with Disabilities Act
19 of 1990, 42 USC §12102, Part 5.5 of the California Health &
20 Safety Code and the California Unruh Civil Rights Act, §§51, et
21 seq., 52, et seq., the California Disabled Persons Act, §§54,
22 et seq., and other statutory measures which refer to the
23 protection of the rights of "physically disabled persons."
24 Plaintiff visited the public accommodation owned and/or
25 operated by Defendants and/or located at the subject property
26 for the purpose of availing himself of the goods, services,
27 facilities, privileges, advantages, or accommodations operated
28 and/or owned by Defendants and/or located on the subject

1 | property.

2 8. Plaintiff is informed and believes and thereon alleges
3 that the subject facility has been newly constructed and/or
4 underwent remodeling, repairs, or alterations since 1971, and
5 that Defendants have failed to comply with California access
6 standards which applied at the time of each such new
7 construction and/or alteration.

III.

FACTS

10 9. Plaintiff has a mobility impairment and uses a
11 wheelchair. Moreover, he has had a history of or has been
12 classified as having a physical impairment, as required by 42
13 USC §12102(2)(A).

14 10. On or about August 7, 2007, June 19, 2008 and
15 continuing through the present date, Plaintiff was denied full
16 and equal access to the facilities owned and/or operated by the
17 Defendants because the facility and/or subject property were
18 inaccessible to members of the disabled community who use
19 wheelchairs for mobility. Plaintiff was denied full and equal
20 access to portions of the property because of barriers which
21 included, but are not limited to, inaccessible path of travel,
22 inaccessible cashier counter, inaccessible restroom facilities
23 and lack of accessible parking space, as well as, lack of
24 signage for said space. Plaintiff was also denied full and
25 equal access because of discriminatory policies and practices
26 regarding accommodating people with disabilities. Plaintiff
27 filed this lawsuit to compel compliance with access laws and
28 regulations.

1 11. As a result of Defendants' failure to remove
2 architectural barriers, Plaintiff suffered injuries. People
3 with disabilities, because of the existing barriers, are denied
4 full and equal access to the Defendants' facilities. The ADA
5 has been in effect for more than 16 years. Given the vast
6 availability of information about ADA obligations, including
7 FREE documents which are available from the U.S. Department of
8 Justice by calling (800) 514-0301 or at the following web
9 sites: www.sba.gov/ada/smbusgd.pdf, www.ada.gov/taxpack.pdf and
10 www.usdoj.gov/crt/ada, the failure of Defendants to comply with
11 their barrier removal obligations is contemptible.

12 12. Plaintiff is an otherwise qualified individual as
13 provided in the Americans with Disabilities Act of 1990, 42 USC
14 §12102, the Rehabilitation Act of 1973, Section 504 (as amended
15 29 USC §794) and the California Unruh Civil Rights Act, Civil
16 Code §§51, 52, 54.1, and 54.3, and other statutory measures
17 which refer to the protection of the rights of "physically
18 disabled persons." Plaintiff visited the public facilities
19 owned and operated by Defendants for the purpose of availing
20 himself of the goods and services offered and provided by
21 Defendants and/or for the purpose of obtaining removal of
22 architectural barriers and/or modification of policies,
23 practices and procedures to provide accessibility to people
24 with disabilities. Plaintiff was injured in fact, as set forth
25 more specifically herein.

26 13. Plaintiff alleges that Defendants will continue to
27 operate public accommodations which are inaccessible to him and
28 to other individuals with disabilities. Pursuant to 42 USC

1 §12188(a), Defendants are required to remove architectural
2 barriers to their existing facilities.

3 14. Plaintiff has no adequate remedy at law for the
4 injuries currently being suffered in that money damages will
5 not adequately compensate Plaintiff for the amount of harm
6 suffered as a result of exclusion from participation in the
7 economic and social life of this state.

8 15. Plaintiff believes that architectural barriers
9 precluding Plaintiff full and equal access of the public
10 accommodation will continue to exist at Plaintiff's future
11 visits, which will result in future discrimination of
12 Plaintiff, in violation of the Americans with Disabilities Act.
13 Plaintiff is currently being subjected to discrimination
14 because Plaintiff cannot make use of and obtain full and equal
15 access to the facilities, goods and/or services offered by
16 Defendants to the general public. Plaintiff seeks damages for
17 each offense relating to each of Plaintiff's visits to the
18 subject property when Plaintiff was denied full and equal
19 access to the subject property or was deterred from attempting
20 to avail himself of the benefits, goods, services, privileges
21 and advantages of the place of public accommodation at the
22 subject property because of continuing barriers to full and
23 equal access.

24 IV.

25 FIRST CLAIM FOR
26 VIOLATION OF AMERICAN WITH DISABILITIES ACT
27 42 USC §12101, et seq.

27 16. Plaintiff re-alleges and incorporates by reference
28 each and every allegation contained in paragraphs 1 through 15,

1 inclusive, as though set forth fully herein.

2 17. Plaintiff was denied full and equal access to
3 Defendants' goods, services, facilities, privileges,
4 advantages, or accommodations within a public accommodation
5 owned, leased and/or operated by Defendants, in violation of 42
6 USC §12182(a). Plaintiff was, therefore, subjected to
7 discrimination and is entitled to injunctive relief pursuant to
8 42 USC §12188 as a result of the actions or inaction of
9 Defendants.

10 18. Among other remedies, Plaintiff seeks an injunctive
11 order requiring compliance with state and federal access laws
12 for all access violations which exist at the property,
13 requiring removal of architectural barriers and other relief as
14 the court may deem proper. Plaintiff also seeks any other
15 order that will redress the discrimination to which he has been
16 subjected, is being subjected and/or will be subjected.

17 **v.**

18 **SECOND CLAIM FOR**
19 **VIOLATION OF CALIFORNIA CIVIL CODE**

20 19. Plaintiff re-alleges and incorporates by reference
21 each and every allegation contained in paragraphs 1 through 18,
22 inclusive, as though set forth fully herein.

23 20. Based on the facts plead hereinabove and elsewhere in
24 this complaint, Defendants did, and continue to, discriminate
25 against Plaintiff and persons similarly situated by denying
26 disabled persons full and equal access to and enjoyment of the
27 subject facilities and of Defendants' goods, services,
28 facilities, privileges, advantages or accommodations within a

1 public accommodation, in violation of California Civil Code
2 §§51, et seq., 52, et seq., and 54, et seq.

3 21. Defendants' actions constitute a violation of
4 Plaintiff's rights under California Civil Code §§51, et seq.,
5 52, et seq., and 54, et seq. and therefore Plaintiff is
6 entitled to injunctive relief remedying all such violations of
7 California access laws and standards. In addition, Plaintiff
8 is entitled to damages under California Civil Code §54.3 for
9 each offense. The amount of damages suffered by Plaintiff is
10 not yet determined. When the amount is ascertained, Plaintiff
11 will ask the Court for leave to amend this complaint to reflect
12 this amount. Plaintiff is also entitled to and requests
13 attorneys' fees and costs.

14 22. The actions of Defendants were and are in violation of
15 the Unruh Civil Rights Act, California Civil Code §§51, et seq.
16 and therefore Plaintiff is entitled to injunctive relief
17 remedying all such violations of California access laws and
18 standards. In addition, Plaintiff is entitled to damages under
19 California Civil Code §52 for each offense. The amount of
20 damages suffered by Plaintiff is not yet determined. When the
21 amount is ascertained, Plaintiff will ask the Court for leave
22 to amend this complaint to reflect this amount.

23 23. Plaintiff seeks all of the relief available to him
24 under Civil Code §§51, 52 et seq., 54, 54.1, 54.2, 54.3, and
25 any other Civil Code Sections which provide relief for the
26 discrimination suffered by Plaintiff, including damages and
27 attorneys fees.

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1 VI.

2 **THIRD CLAIM FOR**
3 **VIOLATION OF HEALTH AND**
SAFETY CODE §19950, ET SEQ.

4 24. Plaintiff re-alleges and incorporates by reference
5 each and every allegation contained in paragraphs 1 through 23,
6 inclusive, as though set forth fully herein.

7 25. Defendants' facilities are public accommodations
8 within the meaning of Health and Safety Code §19950, et seq.,
9 and Plaintiff is informed and believes and thereon alleges that
10 Defendants have newly built or altered the subject property
11 and/or the subject facility since 1971 within the meaning of
12 California Health and Safety Code §19959. The aforementioned
13 acts and omissions of Defendants constitute a denial of equal
14 access to the use and enjoyment of the Defendants' facilities
15 by people with disabilities.

16 26. Defendants' failure to fulfill their duties to provide
17 full and equal access to their facilities by people with
18 disabilities has caused Plaintiff to suffer deprivation of
19 Plaintiff's civil rights, as well as other injuries.

20 27. As a result of Defendants' violations of Health and
21 Safety Code §§19955, et seq., described herein, Plaintiff is
22 entitled to and requests injunctive relief pursuant to Health
23 and Safety Code §§19953, and to reasonable attorney's fees and
24 costs.

25 VII.

26 **FOURTH CLAIM FOR DECLARATORY RELIEF**

27 28. Plaintiff re-alleges and incorporates by reference
28 each and every allegation contained in paragraphs 1 through 27,

1 inclusive, as though set forth fully herein.

2 29. An actual controversy now exists in that Plaintiff is
3 informed and believes and thereon alleges that Defendants'
4 premises are in violation of the disabled access laws of the
5 State of California including, but not limited to, Civil Code
6 §§51, et seq., §§52, et seq., §§54, et seq., Health and Safety
7 Code §§19950, et seq., Government Code §§4450, et seq. and
8 7250, et seq., Title 24 of the California Code of Regulations,
9 and/or Title III of the Americans with Disabilities Act and its
10 implementing Accessibility Regulations.

11 30. A declaratory judgment is necessary and appropriate at
12 this time so that each of the parties may know their respective
13 rights and duties and act accordingly.

VIII.

FIFTH CLAIM FOR INJUNCTIVE RELIEF

16 31. Plaintiff re-alleges and incorporates by reference
17 each and every allegation contained in paragraphs 1 through 30,
18 inclusive, as though set forth fully herein.

19 32. Plaintiff will suffer irreparable harm unless
20 Defendants are ordered to remove architectural barriers at
21 Defendants' public accommodation, and/or to modify their
22 policies and practices regarding accommodating people with
23 disabilities. Plaintiff has no adequate remedy at law to
24 redress the discriminatory conduct of Defendants.

25 33. Plaintiff seeks injunctive relief to redress
26 Plaintiff's injuries.

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IX.2
JURY DEMAND3
34. Pursuant to Rule 38 of the Federal Rules of Civil
4 Procedure, Plaintiffs hereby request a jury trial.5 WHEREFORE, Plaintiff prays for judgment against the
6 Defendants, SAN DIEGO FRICTION PRODUCTS, STONECREEK HOMES, INC.
7 and DOES 1 through 10, as follows:

- 8 1. For injunctive relief, compelling Defendants to comply
9 with the Americans with Disabilities Act, the Unruh
10 Civil Rights Act and the Disabled Persons Act. Note:
11 the plaintiff is not invoking section 55 of the
12 California Civil Code and is not seeking injunctive
13 relief under that section;
- 14 2. That the Court declare the respective rights and
15 duties of Plaintiff and Defendants as to the removal
16 of architectural barriers at Defendants' public
17 accommodations;
- 18 3. An order awarding Plaintiff actual, special and/or
19 statutory damages for violation of his civil rights
20 and for restitution including, but not limited to,
21 damages pursuant to the applicable Civil Code Sections
22 including, but not limited to, §§52 and 54.3 for each
23 and every offense of Civil Code §§51 and 54;
- 24 4. An award of compensatory damages according to proof;
- 25 5. An award of up to three times the amount of
26 actual damages pursuant to the Unruh Civil
27 Rights Act and the Disabled Persons Act; and
- 28 6. An order awarding Plaintiff reasonable attorneys' fees

1 and costs;

2 7. Such other and further relief as the Court deems
3 proper.

4 DATED:

5 7/1/08

6 LAW OFFICES OF AMY B. VANDEVELD

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AMY B. VANDEVELD,
Attorney for Plaintiff

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IS44

(Rev. 07/89)

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE SECOND PAGE OF THIS FORM.)

I (a) PLAINTIFFS

KAREL SPIKES

DEFENDANTS

SAN DIEGO FRICTION PRODUCTS,
INC.; STONECREEK HOMES, INC.
and DOES 1 THROUGH 10,

Inclusive

(b) COUNTY OF RESIDENCE OF FIRST LISTED
PLAINTIFF
(EXCEPT IN U.S. PLAINTIFF CASES)

San Diego

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT
(IN U.S. PLAINTIFF CASES ONLY)

San Diego

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Amy B. Vandeveld, Esq.
LAW OFFICES OF AMY B. VANDEVELD
1850 Fifth Avenue, Suite 22
San Diego, CA 92101 (619) 231-8883

ATTORNEYS (IF KNOWN)

'08 CV 1201 DMS WMc

II. BASIS OF JURISDICTION (PLACE AN X IN ONE BOX ONLY)

- U.S. Government Plaintiff XX Federal Question (U.S. Government Not a Party)
- 2 U.S. Government Defendant Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN X IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT) (For Diversity Cases Only)		
PT	DEF	PT DEF
Citizen of This State	<input type="checkbox"/> 1 <input type="checkbox"/> 1	Incorporated or Principal Place of Business in This State <input type="checkbox"/> 4 <input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2 <input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State <input type="checkbox"/> 5 <input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3 <input type="checkbox"/> 3	Foreign Nation <input type="checkbox"/> 6 <input type="checkbox"/> 6

IV. CAUSE OF ACTION (CITE THE US CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY).

42 U.S.C. Sections 12101-12111, 11281-12184 and 12201 et. seq.

V. NATURE OF SUIT (PLACE AN X IN ONE BOX ONLY)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
• 110 Insurance	PERSONAL INJURY	PERSONAL INJURY		
• 120 Marine	310 Airplane	• 362 Personal Injury - Medical Malpractice	422 Appeal 28 USC 158	400 State Reapportionment
• 130 Miller Act	315 Airplane Product Liability	• 363 Personal Injury - Product Liability	423 Withdrawal 28 USC 157	410 Antitrust
• 140 Negotiable Instrument	320 Assault, Libel & Slander	• 368 Asbestos Personal Injury Product Liability	PROPERTY RIGHTS	430 Banks and Banking
• 150 Recovery of Overpayment & Enforcement of Judgment	330 Federal Employers' Liability	• 370 Other Fraud	820 Copyrights	450 Commerce/ICC Rates/etc.
• 151 Medicare Act	340 Marine	• 371 Truth in Lending	830 Patent	460 Deportation
• 152 Recovery of Defaulted Student Loans (Excl. Veterans)	345 Marine Product Liability	• 380 Other Personal Property Damage	840 Trademark	470 Racketeer Influenced and Corrupt Organizations
• 153 Recovery of Overpayment of Veterans Benefits	350 Motor Vehicle	• 385 Property Damage Product Liability	SOCIAL SECURITY	850 Selective Service
• 160 Stockholders Suits	355 Motor Vehicle Product Liability		861 HIA (13958)	850 Securities/Commodities Exchange
• 190 Other Contracts	360 Other Personal Injury		862 Block Lung (923)	
• 195 Contract Product Liability			863 DIWC/DIWV (415(g))	875 Customer Challenge 12 USC
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	FEDERAL TAX SUITS	881 Agricultural Act
• 210 Land Condemnation	411 Voting	510 Motions to Vacate Sentence Habeas Corpus	864 SSID Title XVI	892 Economic Stabilization Act
• 220 Foreclosure	442 Employment	530 General	865 RSL (415(e))	893 Environmental Matters
• 230 Rent Lease & Ejectment	443 Housing/Accommodations	535 Death Penalty	870 Taxes (U.S. Plaintiff or Defendant)	894 Energy Allocation Act
• 240 Trespass to Land	444 Welfare	540 Mandamus & Other	871 IRS - Third Party 26 USC 7609	895 Freedom of Information Act
• 245 Trespass Product Liability	446 Other Civil Rights	550 Civil Rights		900 Appeal of Fee Determination Under Equal Access to Justice
• 290 All Other Real Property		555 Prisoner Conditions		950 Constitutionality of State

VI. ORIGIN (PLACE AN X IN ONE BOX ONLY)

Original Proceeding 2 Removal from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from another district (specify) 6 Multidistrict Litigation 7 Appeal to District Judge from Magistrate Judgment

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER f.r.c.p. 23

DEMANDS TO BE determined at trial Check YES only if demanded in complaint: YES NO

VIII. RELATED CASE(S) IF ANY (See Instructions): JUDGE

DATE 7/2/08

SIGNATURE OF ATTORNEY OF RECORD

152642 \$350.00

TD 07/03/08

UNITED STATES
DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
SAN DIEGO DIVISION

152642 - MB

July 03, 2008
16:18:53

Civ Fil Non-Pris
USAO #: 08CV1201 CIVIL FILING
Judge..: DANA M SABRAW \$350.00 CK
Amount.:
Check#: BC3427

Total-> \$350.00

FROM: KAREL SPIKES VS
SAN DIEGO FRICTION PRODUCTS,
ET AL